IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO: 2869 of 2003

Between:

Syed Asif Ali, S/o. Sued Yusuf Ali,
O/o.District Scheduled Caste Service Co-op. Societies Ltd., Mahaboobnagar.

..... PETITIONER

AND

1 The Andhra Pradesh Scheduled Caste Co-operative Finance

Corporation Limited, Rep. by Managing Director, Hyderabad.
2 The District Collector/Chairman,
The District Scheduled Caste Services Co-operative Societies

Limited, Mahaboobnagar.
3 The Executive Engineer (SW),
The District Scheduled Caste Services Co-operative Societies

Limited, Mahaboobnagar.
4 The Government of Andhra Pradesh, rep. by its Principal

Secretary, Social Welfare Department, Secretariat Builidngs,
Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of certiorari calling for all the connected records including the impugned proceedings of the second respondent in Rc.No.B/879/99 dated 29-4-2000 and the consequential order or the fourth respondent in letter No. 12499/SCP.II-2/2000-8 dated 26-4-2002 and quash the same as illegal, improper unjust, arbitrary, violative of principles of natural justice and contrary to law and further direct the respondents to absorb the petitioner with effect from 1-11-1998 from the date on which a clear vacancy arose with all consequential benefits including seniority and monetary.

Counsel for the Petitioner: MR.K.G.KRISHNA MURTHY

Counsel for the Respondents: MR.M.V.S.SURESH KUMAR, Standing Counsel for A.P.S.C.Co-operative Finance Corporation Ltd.

The Court made the following:

ORDER:

Seeking a writ of certiorari calling for all the connected records including the impugned proceedings of the second respondent in RC.No.B/879/99 dated 29-04-2000, and the consequential order of the fourth respondent in letter No.12499/SCP.II-2/2000-8 dated 26-04-2002, and to quash the same, and to further direct the respondents to absorb the petitioner into service w.e.f., 1-11-1998 with all consequential benefits including seniority and monetary benefits, the present writ petition has been filed.

The facts of the case *sans* unnecessary details are as follows:

Petitioner was appointed as NMR Watchman/Driver in the respondent-Corporation on 10-07-1987. Since the regular driver could not discharge his duties due to ill-health, the petitioner's services have been utilized as driver *vide* proceedings in Rc.No.B/ESH/1748/97, dated 29-12-1997. After demise of the regular driver, the petitioner made representation to consider his case for regularization in the said vacancy, and his services were regularized w.e.f. 1-11-1998 *vide* proceedings in Rc.No.B/879/99 dated 25-2-2000, and his pay was also fixed *vide* Rc.No.B/879/99, dated 06-03-2000. The petitioner's grievance is that the second respondent, without issuing any notice to him, cancelled the regularization order *vide* Rc.No.B/879/99 dated 29-04-2000. Hence, the writ petition.

The respondents 1 to 3 filed their counter-affidavit denying the allegations levelled in the writ petition. It was submitted that in fact the petitioner was engaged as watchman, and since the regular driver was unable to discharge his duties, the petitioner's services were utilized as driver on daily wage basis only. It is further submitted that the Government of A.P. issued G.O.Ms.No.212 Finance & Planning dated 12-04-1994 prescribing certain guidelines for regularizing the services of

NMR/daily wage workers in the State of Andhra Pradesh. Consequently, all the Departments were directed to process the cases of eligible candidates for regularization of their services and obtain clearance of the Government before issuing orders. Since the services of the petitioner were regularised without seeking clearance from the Government, the second respondent was directed to send proposal under G.O.Ms.No.212 Finance & Planning dated 12-04-1994 for approval, if the petitioner fulfilled all the conditions laid down in the said G.O. As the petitioner did not possess the requisite educational qualification, his claim was rightly rejected by the first respondent *vide* letter No.12499/SCP.II-2/00-8 dated 26-04-2002. Ultimately, they prayed to dismiss the writ petition.

The learned Counsel appearing for the petitioner contended that no minimum educational qualifications are required for the post of driver as per the A.P. Government Drivers (Technical Category) Subordinate Service Rules, which will apply to the respondent-Corporation also. Therefore, rejection of the petitioner's case solely on the ground that he does not possess requisite educational qualification is not tenable. Finally, he prays to set aside the rejection proceedings issued by the first respondent.

The learned Standing Counsel appearing for the respondent-Corporation contended that in fact there is no vacancy for the post of driver, the second respondent was mislead and the petitioner's services were regularized though he does not possess requisite educational qualification. He further contended that the petitioner does not fulfill the conditions prescribed in G.O.Ms.No.212 Finance & Planning dated
22-12-1994, and therefore his services cannot be regularized.

Heard learned Counsel on either side. Perused the entire material available on record.

The specific case of the petitioner is that he was appointed as watchman in the year 1987, but his services have been utilized as driver from the date of his

appointment. When a vacancy arose due to the death of regular driver on 31-10-1998, the petitioner made representation to the second respondent, who issued proceedings in Rc.No.B/879/99 dated 25-02-2000 regularising his services with effect from 1-11-1998. Thereafter, the first respondent issued Rc.No.B/879/99 dated 29-04-2000 cancelling the regularization of the petitioner's services, and directed the second respondent to send fresh proposal. After receiving the said proposal, the first respondent *vide* letter No.12499 dated 26-04-2002 rejected the petitioner's claim on the ground that the petitioner did not possess requisite educational qualification, therefore, he is not entitled for regularization of his services as driver in terms of G.O.Ms.No.212 Finance & Planning dated 22-12-1994.

Though the learned Counsel for the respondents contended that there is no vacancy in the cadre of driver, but at the same time, the proceedings of the second respondent in Rc.No.B/879/99 dated 25-02-2000 goes to show that the services of the petitioner have been regularized in the existing vacancy. Even when the proposals were submitted, it was neither pleaded nor urged by the learned Counsel for the respondents that there is no vacancy at all. Therefore, the contention of the learned counsel holds no water.

The core point that has to be decided in this writ petition is as to whether the A.P. Government Drivers (Technical Category) Subordinate Service Rules prescribe minimum educational qualification for the post of driver or not. G.O.Ms.No.212 Finance & Planning dated 22-12-1994 prescribes certain conditions for the purpose o f regularising the services of NMR/daily wage workers in the State of Andhra Pradesh, which read as under:

> *'1.The persons appointed should possess the qualifications prescribed as per rules in force as on the date from which his/her services have to be regularized.*
>
> *2.They should be within the age limits as on the date of appointment as NMR/daily wage employee.*
>
> *3.The rule of reservation wherever applicable will be followed and backlog will be set-off against future vacancies.*
>
> *4.Sponsoring of candidates from employment exchange is relaxed.*

5.Absorption shall be against clear vacancies of posts considered necessary to be continued as per work-load including the vacancies already notified to the A.P. Public Service Commission-District Selection Committee.

6.In the case of work charged establishment, where there will be no vacancies, because of the fact that the expenditure on work charged is above a fixed percentage of PS charges and as soon as the work is over, the services of work charged establishment will have to be terminated, they shall be adjusted in the other Departments, District Offices provided there are clear vacancies of Last Grade Service.'

The first condition in the above said G.O. is that the person should possess the qualifications prescribed as per the Rules. It is not disputed before this Court that the A.P. Government Drivers (Technical Category) Subordinate Service Rules will also apply to the respondent-Corporation. Rule 5 of A.P. Government Drivers (Technical Category) Subordinate Service Rules, adumbrates that no person shall be eligible for appointment to the categories specified in Column (1) of the annexure to these Rules by the method specified in Column (2) unless he possess the qualification specified in the corresponding entry in Rule (3) thereof. As per the annexure, the qualifications are that he must possess a current valid driving license and he must be able to read and write Telugu/ Urdu or English or Hindi. Therefore, the rejection of the petitioner's case for regularization of his service in the post of driver is contrary to the Rules. Hence, letter No.12499/SCP.II-2/00-8 dated 26-04-2002 issued by the first respondent is liable to be set aside.

For the foregoing reasons, the writ petition is allowed land the matter is remitted to the fourth respondent for consideration of the petitioner's case for regularization of his services as driver in terms of G.O.Ms.No.212 Finance & Planning dated
22-04-1994 with reference to A.P. Government Drivers (Technical Category) Subordinate Service Rules. The fourth respondent shall pass appropriate orders within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

12-07-2005

Note:

Furnish CC

In two days.

B/o

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To

1 The Managing Director, Andhra Pradesh Scheduled Caste

Co-operative Finance Corporation Limited, Hyderabad.
2 The District Collector/Chairman,
The District Scheduled Caste Services Co-operative Societies

Limited, Mahaboobnagar.
3 The Executive Engineer (SW),
The District Scheduled Caste Services Co-operative Societies

Limited, Mahaboobnagar.
4 The Principal Secretary, Government of Andhra Pradesh,

Social Welfare Department, Secretariat Buildings,
Hyderabad.

5 Two C.D. Copies